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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 104/2023**

SHANGRILA CORPORATE SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Aseem Chaturvedi, Mr. Shivank
Diddi, Advs.

versus

ELI RESEARCH INDIA PRIVATE LIMITED Respondent

Through: Mr. Amit Nahata, Adv.

+ **ARB.P. 105/2023**

SHANGRILA CORPORATE SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Aseem Chaturvedi, Mr. Shivank
Diddi, Advs.

versus

ECLL PRIVATE LIMITED Respondent

Through: Mr. Amit Nahata, Adv.

+ **ARB.P. 106/2023**

SHANGRILA CORPORATE SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Aseem Chaturvedi, Mr. Shivank
Diddi, Advs.

versus

**QUADRAX GROWTH PRIVATE LIMITED FORMERLY
KNOWN AS GBIG BUSINESS SOLUTIONS PRIVATE LIMITED**

..... Respondent

Through: Mr. Amit Nahata, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER



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05.04.2024

1. By way of the present petitions filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The facts in detail have been narrated in the order dated 01.02.2023 and have not been reproduced herein for the sake of brevity and to avoid repetition.
3. The parties entered into an agreement to sell and purchase dated 30.11.2018. The agreement in all the three petitions is the same agreement.
4. It is not disputed that the agreement contains the arbitration clause (Clause-12) which provides that all disputes, with respect to the said agreement, shall be referred to arbitration as per provisions of the A&C Act, and further provides that the place of arbitration would be at New Delhi.
5. The only contention raised by the respondent opposing the reference of matter to the arbitration is that the dispute raised by the petition is outside the purview of the agreement between the parties.
6. Learned counsel submits that by way of the present dispute the petitioner has raised the dispute regarding the service charge which does not fall within the purview of the agreement executed between the parties.
7. Learned counsel has specifically referred to ***DLF Home Developers Limited vs Rajpura Homes Private Limited, Arbitration Petition***



(Civil) No. 17 of 2020 and has emphasised that if the dispute in question does not correlate to the agreement between the parties, the matter should not be referred.

8. *Per contra*, learned counsel for the petitioner has referred to the clause-1 of the agreement and has submitted that there is an arbitrable dispute between the parties. Learned counsel has also referred to the reply of the respondent dated 06.11.2022.
9. Learned counsel submits that the arbitration was invoked vide notice dated 21.10.2022 which was duly responded by the respondent nominated Hon'ble Justice Barkat Ali Zaidi (Retd. President, Delhi State Consumer Disputes Redressal Commission and Retd. Judge Allahabad High Court) as an arbitrator. Learned counsel submits therefore now the respondent cannot take a U-turn and say that the matter cannot be referred to the arbitrator.
10. The scope of jurisdiction at the time of making of reference under Section 11 of the Arbitration and Conciliation Act is very limited to examine whether an arbitration agreement exists between the parties. Reliance can be placed on *M/S Duro Felguera, S.A. vs Gangavaram Port Limited* (2017) 9 SCC 729 wherein the court inter-alia held as under:

“The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the



arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.”

11. It is correct that the court cannot blindly and mechanically refer the matter to the arbitrator. However, at the same time the court at this stage while making the reference cannot resort to interpretation of the covenants of the agreement so as to adjudicate that the dispute is beyond the scope of the agreement. There may be a case where on the face of it the dispute does not relate to the arbitration. Making any further reference or comment on the facts of case would prejudice the rights and contentions of the parties.
12. The claim amount is stated to be around Rupees Fifty Lakhs plus interest.
13. Considering that both the parties have consented to the reference to the arbitral tribunal and keeping all the contentions open, the present petition is disposed of with the following directions:
 - i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii) Ms. Aruna Tiku, Advocate (Mobile No 9810104685) is appointed as an Arbitrator to adjudicate the disputes between the parties.
 - iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC Schedule or as the parties may agree.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.



- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned arbitrator within two weeks from today.

14. In view of the above, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

APRIL 5, 2024/AR..